

§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.

(a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. In a capital case, a postconviction motion for appropriate relief shall be filed within 120 days from the latest of the following:

- (1) The court's judgment has been filed, but the defendant failed to perfect a timely appeal;
- (2) The mandate issued by a court of the appellate division on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (3) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina;
- (4) Following the denial of discretionary review by the Supreme Court of North Carolina, the United States Supreme Court denied a timely petition for writ of certiorari seeking review of the decision on direct appeal by the North Carolina Court of Appeals;
- (5) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina or North Carolina Court of Appeals, but subsequently left the defendant's conviction and sentence undisturbed; or
- (6) The appointment of postconviction counsel for an indigent capital defendant.

(b) The following are the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgment:

- (1) The acts charged in the criminal pleading did not at the time they were committed constitute a violation of criminal law.
- (2) The trial court lacked jurisdiction over the person of the defendant or over the subject matter.
- (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.
- (4) The defendant was convicted or sentenced under a statute that was in violation of the Constitution of the United States or the Constitution of North Carolina.
- (5) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (6) Repealed by Session Laws 1995 (Regular Session, 1996), c. 719, s. 1, effective June 21, 1996.
- (7) There has been a significant change in law, either substantive or procedural, applied in the proceedings leading to the defendant's conviction or sentence, and retroactive application of the changed legal standard is required.
- (8) The sentence imposed was unauthorized at the time imposed, contained a type of sentence disposition or a term of imprisonment not authorized for the particular class of offense and prior record or conviction level was illegally imposed, or is otherwise invalid as a matter of law. However, a motion for appropriate relief on the grounds that the sentence imposed on the defendant is not supported by evidence introduced at the trial and sentencing hearing must be made before the sentencing judge.

- (9) The defendant is in confinement and is entitled to release because his sentence has been fully served.
- (10) The defendant was convicted of a first offense of prostitution under G.S. 14-204, and the court did not discharge the defendant and dismiss the charge pursuant to G.S. 14-204(b); the defendant's participation in the offense was a result of having been a victim of human trafficking under G.S. 14-43.11, sexual servitude under G.S. 14-43.13, or the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)); and the defendant seeks to have the conviction vacated.

(c) Notwithstanding the time limitations herein, a defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon the defendant's eligibility for the death penalty or the defendant's guilt or innocence. A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery.

(d) For good cause shown, the defendant may be granted an extension of time to file the motion for appropriate relief. The presumptive length of an extension of time under this subsection is up to 30 days, but can be longer if the court finds extraordinary circumstances.

(e) Where a defendant alleges ineffective assistance of prior trial or appellate counsel as a ground for the illegality of his conviction or sentence, he shall be deemed to waive the attorney-client privilege with respect to both oral and written communications between such counsel and the defendant to the extent the defendant's prior counsel reasonably believes such communications are necessary to defend against the allegations of ineffectiveness. This waiver of the attorney-client privilege shall be automatic upon the filing of the motion for appropriate relief alleging ineffective assistance of prior counsel, and the superior court need not enter an order waiving the privilege.

(f) In the case of a defendant who is represented by counsel in postconviction proceedings in superior court, the defendant's prior trial or appellate counsel shall make available to the defendant's counsel their complete files relating to the case of the defendant. The State, to the extent allowed by law, shall make available to the defendant's counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. If the State has a reasonable belief that allowing inspection of any portion of the files by counsel for the defendant would not be in the interest of justice, the State may submit for inspection by the court those portions of the files so identified. If upon examination of the files, the court finds that the files could not assist the defendant in investigating, preparing, or presenting a motion for appropriate relief, the court in its discretion may allow the State to withhold that portion of the files.

(g) The defendant may file amendments to a motion for appropriate relief at least 30 days prior to the commencement of a hearing on the merits of the claims asserted in the motion or at any time before the date for the hearing has been set, whichever is later. Where the defendant has filed an amendment to a motion for appropriate relief, the State shall, upon request, be granted a continuance of 30 days before the date of hearing. After such hearing has begun, the defendant may file amendments only to conform the motion to evidence adduced at the hearing, or to raise claims based on such evidence. (1977, c. 711, s. 1; 1981, c. 179, s. 7; 1993, c. 538, s. 25; 1994, Ex. Sess., c. 24, s. 14(b); 1995 (Reg. Sess., 1996), c. 719, s. 1; 2009-517, s. 2; 2013-368, s. 9.)